

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting Clerk of the Commission of the City of Helena, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution entitled: "RESOLUTION RELATING TO AMENDMENT NUMBER ONE TO LEASE-PURCHASE AGREEMENT WITH REGARD TO THE CERTIFICATES OF PARTICIPATION, SERIES 2009" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Commission of the City at a regular meeting on January 25, 2010 and that the meeting was duly held by the City Commission and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following City Commission members voted in favor thereof: Mayor Smith and Commissioners Cartwright, Elsaesser, Ellison and Thweatt.

voted against the same:

abstained from voting thereon:

or were absent:

WITNESS my hand and seal officially this 25<sup>th</sup> day of January, 2010.

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Clerk of the Commission

**RESOLUTION NO. 19717**

**RESOLUTION RELATING TO AMENDMENT NUMBER ONE TO LEASE-PURCHASE AGREEMENT WITH REGARD TO THE CERTIFICATES OF PARTICIPATION, SERIES 2009**

WHEREAS, the City of Helena, Montana (the "City") is a political subdivision of the State of Montana (the "State") and, pursuant to the Constitution and laws of the State, particularly Montana Code Annotated, the City is authorized by Montana Code Annotated, inter alia, Sections 7-1-4124 and 7-8-4101, as amended, to enter into leases and amend leases for real and personal property and hire all necessary buildings for use of the City; and

WHEREAS, the City has undertaken the design, construction, installation and equipping of an approximately 365 space parking garage and adjacent approximately 100 parking space surface parking lot (collectively, the "Project") near the Great Northern Town Center and adjacent to an office building to be constructed by the Board of Investments of the State of Montana ("MBOI") to be leased to Montana State Fund (the "State Fund") in the City on the block bordered by Last Chance Gulch, Front Street, 14<sup>th</sup> Street, and 15<sup>th</sup> Street; and

WHEREAS, in order to finance the Project, the City entered into a Lease-Purchase Agreement, dated as of February 1, 2009 (the "Lease"), by and between the City, as lessee of the Project, and U.S. Bank National Association (the "Trustee"), as lessor of the Project; and

WHEREAS, in order to evidence participation interests in the Lease payments to be made by the City under the terms of the Lease and pursuant to the terms of an Indenture of Trust, dated as of February 1, 2009 (the "Indenture"), by the Trustee and joined in by the City, the Trustee issued Certificates of Participation, Series 2009 (the "Certificates"), in the original aggregate principal amount of \$8,900,000; and

WHEREAS, the insurance consultants of the City are not able to certify certain items required under the current terms of the Lease; and

WHEREAS, the City now wishes to amend Section 7.01(c) of the Lease-Purchase Agreement to allow the City to certify as to the City's compliance with certain provisions of the Lease as they relate to insurance maintained on or related to the Project; and

WHEREAS, the City and the Trustee are proposing to enter into Amendment Number One to Lease-Purchase Agreement, dated as of January 1, 2010 (the "Lease Amendment"), relating to the amendment to Section 7.01(c); and

WHEREAS, the City has complied with the provisions of the Lease regarding property and casualty insurance since the date that the City entered into the Lease and the proposed amendments are being undertaken to correct that insurance certification provisions of the Lease and ensure that compliance by the City with the Lease terms may be certified directly by the City to the Trustee on an annual basis; and

WHEREAS, such amendment to the Lease is authorized by Section 8.04 of the Indenture and by Section 10.01 of the Lease which allows the City and Trustee to, from time to time, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered such supplements as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property leased or intended to be leased hereunder, or for otherwise carrying out the intention of or facilitating the performance of the Lease.

BE IT RESOLVED by the Board of Commissioners of the City as follows:

1. Authorization. For the purposes set forth above, there is hereby authorized the execution and delivery of the Lease Amendment.

All of the provisions of the Lease Amendment, when executed as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Lease Amendment shall be substantially in the form on file with the City on the date hereof, which is hereby approved, with such necessary and appropriate variations, omissions and insertions (including changes to the terms thereof) as the Mayor, City Manager and Administrative Services Director of the City (collectively, the "City Officials"), in their discretion, shall determine. The execution of the Lease Amendment with the manual or facsimile signatures of two or more of the City Officials and the delivery of the Lease Amendment shall be conclusive evidence of such determination

The City Officials are hereby authorized to execute and deliver, on behalf of the City, the Lease Amendment and such other certificates and documents as are necessary or appropriate in connection the supplements and amendments contemplated herein.

No covenant, stipulation, obligation or agreement herein contained or contained in the aforementioned documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member of the City Commission, or any officer, agent or employee of the City in that person's individual capacity, and neither the City Commission nor any officer or employee executing the Lease shall be liable personally on the payments required under the terms of the Lease or be subject to any personal liability or accountability by reason of the City entering into the Lease or the Lease Amendment.

In case any one or more of the provisions of this resolution or of the aforementioned Lease shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution, or of the aforementioned Lease, or of the Certificates, but this resolution, the aforementioned Lease, and the Certificates shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.

2. Ratification. Except as specifically amended or supplemented by the terms of the Lease Amendment, all other terms of the Lease and the other documents relating to the Certificates are hereby reaffirmed and ratified. The City Officials and other officers of the City, Kennedy & Graven, Chartered, P.C. as bond counsel to the City, and other agents or employees of the City are hereby authorized to do all acts and things required of them by or in connection with this resolution, the aforementioned documents for the full, punctual and complete performance of all the terms, covenants and agreements contained in the Certificates, the aforementioned documents and this resolution. In the event that for any reason any of the City Officials is unable to carry out the execution of any of the documents or other acts provided herein, any other City Official or member of the City Commission or officer of the City shall be authorized to act in his capacity and undertake such execution or acts on behalf of the City with full force and effect, which execution or acts shall be valid and binding on the City.

3. Effective Date. This resolution shall be in full force and effect from and after its passage.

PASSED AND ADOPTED by the City Commission of the City of Helena, Montana, this 25th day of January, 2010.

/S/ James E. Smith

Its: Mayor

Attest:

/S/ Debbie Havens

Its: Clerk of the Commission

(SEAL)